



EMPLOYMENT TRIBUNALS

Claimant: Miss Hayley Walker

Respondent: Casa Care Limited T/A Care Watch South Warwickshire

PRELIMINARY HEARING

Heard at: Birmingham Employment Tribunal (via CVP)

On: 16th September 2022

Before: Employment Judge Steward (sitting alone)

Appearances

For the claimant: In Person with the assistance of Mr Overton

For the respondent: Mr Evans (Counsel)

JUDGMENT

1. In accordance with ERA sections 48 and 111, Ms Walker must persuade me that it was not reasonably practicable for her to present her claim within the primary time limit of 3 months plus early conciliation extension. If she persuades me of that, then I have to consider whether the claim form was presented within a further reasonable period.
2. In considering whether it was not reasonably practicable for Ms Walker to present her claim on time:
 - 2.1 it is a question of fact;
 - 2.2 *“to construe the words “reasonably practicable” as the equivalent of “reasonable” is to take a view that is too favourable to the employee. On the other hand, “reasonably practicable” means more than merely what is reasonably capable physically of being done ... [one should] ask colloquially*

and untrammelled by too much legal logic – “was it reasonably feasible to present the complaint to the [employment] tribunal within the relevant three months?”... Palmer and Saunders v Southend-on-Sea Borough Council [1984] 1 All ER 945;

- 2.3 I must answer the question “*against the background of the surrounding circumstances and the aim to be achieved*” – Schultz v Esso Petroleum Ltd [1999] 3 All ER 338 – and take into account all relevant circumstances, which may include: the manner of, and reason for, the dismissal; whether the employer’s conciliation machinery had been used; the substantial cause of the claimant’s failure to comply with the time limit; whether there was any physical impediment preventing compliance, such as illness, or a postal strike; whether, and if so when, the claimant knew of her rights; whether the employer had misrepresented any relevant matter to the employee; whether the claimant had been advised by anyone, and the nature of any advice given; and whether there was any substantial fault on the part of the claimant or her adviser which led to the failure to present the complaint in time (see Palmer and Saunders);
- 2.4 if the claimant is ignorant of her rights and/or of the relevant time limits, this is a relevant consideration but is far from conclusive. In the present case, Ms Walker was not ignorant of time limits, but was, attempting to deal with the claim by way of conciliation etc “*The performance of an act, in this case the presentation of a complaint, is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with, or inhibits, such performance. The impediment may be physical, for instance the illness of the complainant or a postal strike; or the impediment may be mental, namely, the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable. Either state of mind will, further, not be reasonable if it arises from the fault of the complainant in not making such inquiries as he should reasonably in all the circumstances have made, or from the fault of his solicitors or other professional advisers in not giving him such information as they should reasonably in all the circumstances have given him.*” Wall’s Meat Co Ltd v Khan [1979] ICR 52, CA.
3. This is a claim which is significantly out of time. The first question for me is: why was the claim form not submitted in time? Ms Walker decided to attempt to go down the conciliation/arbitration route. When she was questioned she accepted that she knew of the time limits. She was not physically incapacitated and had access to legal advice and the internet.
4. On any view, there was no reason or reasonably practicable reason why the claim could not have been presented within the correct time limit. Though I have every sympathy for the way that Ms Walker went about things the time limits are clear.

Im afraid this claim does not cross the first hurdle as it was reasonably practicable for her to submit the claim on time. Therefore the claim must fail and is dismissed.

Employment Judge Steward
16/09/2022

Sent to the parties on:

06/12/2022

For the Tribunal:

L. O'Neill